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MEASURES TO STRENGTHEN INTERNATIONAL CO-OPERATION IN MATTERS RELATING TO NUCLEAR SAFETY AND RADIOLOGICAL PROTECTION

(c) LIABILITY FOR NUCLEAR DAMAGE

Report by the Board of Governors

1. In resolution GC(XXXIV)/RES/529, adopted at its last regular session, the General Conference took note of the report (in document GC(XXXIV)/931) on the question of liability for nuclear damage submitted by the Board of Governors pursuant to Conference resolution GC(XXXIII)/RES/508, reiterated the priority it attached to the consideration of this question and requested the Board to present a further report on the question to it at its thirty-fifth regular session.

2. As stated in the Board's report, in February 1990, the Board established the Standing Committee on Liability for Nuclear Damage and requested it, in particular, to:

(i) consider international liability for nuclear damage, including international civil liability, international State liability, and the relationship between international civil and State liability;

(ii) keep under review problems relating to the Vienna Convention on Civil Liability for Nuclear Damage and advise States party to the Convention on any such problems; and

(iii) make the necessary substantive preparations and administrative arrangements for a revision conference to be convened in accordance with Article XXVI of the Convention on Civil Liability for Nuclear Damage.

3. In accordance with the decision taken by the Board in February 1990, the Standing Committee is open to all Member States of the Agency, and other States and interested organizations may be invited by the Standing Committee to be represented by observers at its meetings. It meets as appropriate and reports to the Board periodically on the progress of its work.

4. Since the thirty-fourth regular session of the General Conference, the Standing Committee has held two sessions and also an intersessional meeting, during which it moved from a general exchange of views to the consideration of specific texts in connection with revision of the Vienna Convention. The issue of international State liability was also discussed; however, its consideration is still at an early stage.

5. The Standing Committee will hold its next session from 2 to 6 December 1991; this session will be preceded by an intersessional meeting, which will take place from 21 to 25 October 1991.

6. On 12 June 1991, the Board had before it the report of the Standing Committee on its third session (8-12 April 1991), which reflects the progress achieved so far in the consideration of the question of liability for nuclear damage. The Board decided to transmit that report (see the Appendix to this document*/ to the General Conference.

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*/ The Appendix reproduces only the report of the Standing Committee with (in Annexes I and II) the reports of its Drafting Committee and Working Group. Draft texts for the revision of the Vienna Convention adopted by the Drafting Committee for further consideration, written proposals submitted by delegations and other relevant material are not reproduced in this Document; they are available from the Legal Division upon request.

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Appendix

Standing Committee on Liability for Nuclear Damage

SCNL/3/INF.2/Rev. 1

Third Session
Vienna, 8-12 April 1991

23 April 1991

Report of the Standing Committee on Liability for Nuclear Damage

1. The Standing Committee held its third session at the Agency's Headquarters in Vienna from 8 to 12 April 1991, under the Chairmanship of H.E. Mr. L.H.J.B. van Gorkom of the Netherlands. H.E. Mr. Taher Shash of Egypt, Professor Jan Lopuski of Poland, and H.E. Mr. Nelson Laviña, Resident Representative of the Philippines served as Vice-Chairmen. H.E. Mr. Alejandro San Martín Caro, Resident Representative of Peru, served as Rapporteur.

2. Representatives of the following 57 Member States participated in the meeting: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian SSR, Cameroon, Canada, Chile, China, Cuba, Czechoslovakia, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Republic of Korea, Lebanon, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Romania, Saudi Arabia, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Viet Nam, Yugoslavia and Zaire.

3. Four intergovernmental organizations, namely the European Communities represented by the Commission, FAO, OECD/Nuclear Energy Agency and UNEP and three non-governmental organizations, namely British/European Insurance Committee, Greenpeace International and UNIPEDE were represented by observers. One delegation maintained its prior reservation with regard to participation by Greenpeace International.

4. At its opening meeting, the Standing Committee adopted the following agenda:

1. Organization of work, election of officers
2. Proposals for the revision of the Vienna Convention on Civil Liability for Nuclear Damage
   - A. Report of the Drafting Committee of the Second Session (SCNL/2/INF/2)
   - B. Draft texts recommended by the Intersessional Working Group as a framework for further consideration:
     - (a) paragraph 3 of a new article on geographical scope
     - (b) definition of the Installation State in respect of military installations
     - (c) amendment to Article VII
   - C. Other proposals
3. Dispute settlement and procedure for settlement of claims:
   - A. Amendment to Article XI and new Article XIA of the Vienna Convention
   - B. Annex concerning an International Tribunal to be established under Article XIA
     Draft texts recommended by the Intersessional Working Group as a framework for further consideration
4. Draft International Convention on Compensation for Nuclear Damage Supplementary to the Vienna Convention and Paris Convention; draft text recommended by the Intersessional Working Group as a framework for further consideration
5. International State liability for nuclear damage and its relationship to the international civil liability regime
6. Future programme of work
7. Adoption of the report

5. At the same meeting, the Standing Committee reconvened the Drafting Committee to consider items 2 and 4 of the agenda and agreed that Mr. Wouter Sturms of the Netherlands would continue as its Chairman. The Committee also established a Working Group under the Chairmanship of Mr. Christian Zeileissen of Austria to consider items 3 and 5 of the agenda. The reports of the Drafting Committee and the Working Group are reproduced as annexes I and II to this report.

6. The Standing Committee requests the Secretariat to prepare a compilation of the texts of provisions on definition of environmental damage which appear in recent international agreements as well as draft instruments currently under consideration concerning liability in other fields.

7. The Standing Committee further requests the Secretariat to reconvene the open-ended Intersessional Working Group of experts to consider further the issue of supplementary funding for compensation of nuclear damage, inter alia, on the basis of the draft International Convention on Compensation for Nuclear Damage (Annex V of the report of the Intersessional Working Group), and other proposals, as well as the proposals on dispute settlement and settlement of claims with a view to make appropriate recommendations to the next meeting of the Standing Committee.

8. The written proposals submitted by delegations for the third session of the Standing Committee relating to outstanding issues are reproduced in Annex III of the present report.*

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* See the footnote on page 2 of the report by the Board of Governors which precedes this report.

ANNEX I

Report of the Drafting Committee

1. The Drafting Committee held 5 meetings on 8-11 April 1991 and considered items 2 and 4 of the agenda of the Standing Committee.

2. The Committee continued consideration of specific proposals to amend the Vienna Convention on the basis of the draft texts recommended by the second session of the Standing Committee and Intersessional Working Group (11-15 February 1991). It also had before it written proposals and observations submitted prior to and during the third session of the Standing Committee by delegations of Australia, China, Denmark, France, Germany, Ireland, Israel, Japan, Philippines, Poland, Sweden, Thailand, the United States and the British/European Insurance Committee.

3. The Committee made substantial progress in adopting a number of draft texts for revision of the Vienna Convention. They are marked in the annex to this report* as incorporated in the draft texts adopted by the Committee at the second session as a basis for further consideration. The issues on which only preliminary discussions were held or which clearly needed further drafting are identified by square brackets.

Due to lack of time, the Drafting Committee was not in a position to discuss or discussed partially some of the issues referred to it and related written proposals.

4. The Committee agreed that outstanding issues, proposals and observations referred to in paragraph 3 above could be dealt with at further sessions of the Standing Committee. It further agreed that written proposals relating to such issues which have been submitted by delegations for this session would be annexed to the report of the Standing Committee.

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* See the footnote on page 2 of the report by the Board of Governors which precedes this report.

5. The Committee held a brief exchange of views on the issue of supplementary funding. It agreed that the draft International Convention on Compensation for Nuclear Damage Supplementary to the Vienna Convention and Paris Convention, prepared by the Secretariat, as well as an alternative proposal, submitted by the delegation of Poland for this session, should form the basis for future consideration of this issue and to that end should be annexed to the report of the Standing Committee.

ANNEX II

Report of the Working Group

1. The Working Group held two meetings on 9-10 April 1991 and considered items 3 and 5 of the Agenda of the Standing Committee.

2. The Working Group had a general exchange of views on the item of dispute settlement and procedure for settlement of claims using the draft texts recommended by the Intersessional Working Group for Article XI and a new Article XI.A of the Vienna Convention as a general framework for consideration. As the discussion was inconclusive on this issue and in the light of time constraints, the Working Group recommended that the item be further considered at the next session of the Standing Committee on the basis of the draft texts recommended by the Intersessional Working Group as proposed to be amended by the delegations of Austria and the Netherlands, the proposal submitted by Egypt which received wide support from the delegates who took the floor in the Working Group, as well as new proposals that may be submitted for the next session.

3. In the discussion on the question of International State Liability for Nuclear Damage and its relationship to the international civil liability regime there was wide support from the delegates who took the floor for the inclusion of elements of international State liability in the revised Vienna Convention. Some delegations on the other hand had reservations or objections to such an inclusion. The Working Group concluded that the Standing Committee should continue its discussion on the issue. It considered that this discussion should be based on the Australian and Italian written proposals submitted to this session of the Standing Committee as well as new proposals that may be submitted.